

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 869 Adjudication of Guilt
SPONSOR(S): Gelber
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub.)		Kramer	De La Paz
2) Public Safety & Crime Prevention			
3) Judiciary			
4)			
5)			

SUMMARY ANALYSIS

HB 869 provides that a court may not withhold adjudication of guilt upon a defendant for any felony offense if the defendant has a prior withhold of adjudication for a felony that did not arise out of the same transaction as the current felony. The bill provides an exception for cases in which the prior withhold was more than 5 years prior to the date of the commission of the current felony offense, the defendant has not been adjudicated guilty of any felony since the prior withhold of adjudication and the state attorney requests that adjudication be withheld or the court makes written findings setting forth specific facts supporting its conclusion that failure to withhold adjudication would cause manifest injustice.

The bill also provides that a court may not withhold adjudication for a felony if the defendant has two or more prior withholds of adjudication for felony offenses that did not arise from the same transaction as the current felony offense.

The bill repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0869.ps.doc
DATE: February 25, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

When a defendant is found guilty after a trial or pleads guilty or nolo contendere, a judge is permitted to withhold the judgment of guilt for the offense. This is known as a withhold of adjudication. Section 948.01(2) provides that if it appears to a judge that a defendant is “not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by the law”, the judge may withhold the adjudication of guilt and place the defendant on probation. Florida Rule of Criminal Procedure 3.670 provides that if a defendant is found guilty, a judgment of guilt shall be rendered in open court and in writing, signed by the judge, filed and recorded. The rule provides that a judge may withhold adjudication of guilt if the judge places the defendant on probation

During January of 2004, the Miami Herald published a series of articles¹ relating to withholds of adjudication. According to the newspaper’s review of Florida felony cases between 1993 and 2002, nearly 17,000 defendants received more than one withhold of adjudication². The series of articles documented the details of a number of instances in which offenders received repeated withholds of adjudication. The newspaper claimed to have found more than 67,000 new crimes committed by offenders who had adjudication withheld for their first conviction.³ According to the articles, withholds of adjudication are often used as a tool in plea bargaining a case.

In Florida, a felony conviction impacts a person’s civil rights such as the right to vote⁴ and to possess a firearm. However, if adjudication of guilt is withheld, these rights are not suspended.⁵

The Florida Supreme Court has noted that “although an adjudication of guilt is generally required for there to be a ‘conviction’, that term as used in Florida law is a ‘chameleon-like term that has drawn its meaning from the particular statutory context in which the term is used’” *State v. McFadden*, 772 So.2d 1209 (Fla. 2000)(citations omitted) . For example, under the Florida Evidence Code, evidence of a prior felony conviction can be used to attack the credibility of a witness.⁶ The Florida Supreme Court has held that this evidence cannot be used if adjudication was withheld for the prior conviction. *Id.*

¹ The articles were published on January 25 – 28, 2004; See <http://www.miami.com/mld/miamiherald/news/photos/7788988.htm>

² “A second chance turns into many”, *Miami Herald*, January 27, 2004; <http://www.miami.com/mld/miamiherald/7807123.htm>

³ *Id.*

⁴ Article VI, Section 4, Florida Constitution; s. 97.041, F.S.

⁵ In *Snyder v. State*, 673 So.2d 9 (Fla. 1996), the defendant claimed that the statute making it unlawful for felony to possess a firearm, s. 790.23, F.S., did not apply to a conviction that was on appeal. The Florida Supreme Court held that a defendant is “convicted” when adjudicated guilty.

⁶ s. 90.610(1), F.S.

However, in Raulerson v. State, 763 So.2d 285 (Fla. 2000), the Florida Supreme Court considered the issue of whether the term “conviction” as used in the statute that provides for increased sanctions for a third conviction of driving with a suspended license, includes offenses for which adjudication was withheld. The court examined the statutory language and legislative history and determined that the term included offenses for which adjudication was withheld. Further, in McCrae v. State, 395 So.2d 1145 (Fla. 1980), the Court held that a guilty plea or verdict with a withhold of adjudication constituted a conviction which could be considered an aggravating circumstance in a capital sentencing proceeding.

There are a number of offenses for which a judge is statutorily prohibited from withholding adjudication of guilt including the offenses of DUI manslaughter, assault or battery on a law enforcement officer and drug trafficking.⁷

HB 869 provides that a court may not withhold adjudication of guilt upon a defendant for any felony offense if the defendant has a prior withhold of adjudication for a felony that did not arise out of the same transaction as the current felony. The bill provides an exception for cases in which the prior withhold was more than 5 years prior to the date of the commission of the current felony offense, the defendant has not been adjudicated guilty of any felony since the prior withhold of adjudication and the state attorney requests that adjudication be withheld or the court makes written findings setting forth specific facts supporting its conclusion that failure to withhold adjudication would cause manifest injustice.

The bill also provides that a court may not withhold adjudication for a felony if the defendant has two or more prior withholds of adjudication for felony offenses that did not arise from the same transaction as the current felony offense.

The bill repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill.

C. SECTION DIRECTORY:

Section 1: Creates s. 775.08435, F.S.; prohibits withhold of adjudication of guilt under certain circumstances.

Section 2: Repeals Florida Rule of Criminal Procedure 3.670 to the extent that it is inconsistent with the provisions of the bill.

Section 3. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁷ See ss. 316.656, 784.07 and 893.135(3), F.S. Other offenses for which a judge is prohibited from withholding adjudication include: boating under the influence which results in manslaughter (s. 327.36); offenses for which a minimum mandatory term of imprisonment must be imposed under “10-20-Life” (s. 775.087); offenses relating to weapons of mass destruction (ss. 790.163, 790.164, 790.165, 790.166, F.S.); bookmaking (s. 849.25, F.S.); and assault or battery on a person over the age of 65 (s. 784.08, F.S.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES